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Immigration and Naturalization Service

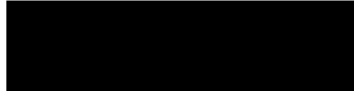
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: LIN 02 146 54043 Office: Nebraska Service Center

Date: JAN 13 2003

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(ii)(a)

IN BEHALF OF PETITIONER: Self-represented

Identifying data, such as names and addresses, should be redacted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal is dismissed.

The petitioner operates a farm that engages in fruit production. It desires to employ the beneficiary as an orchard worker for eleven months. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could be made. The director determined that the petitioner had not established that the beneficiary had the requisite education and experience specified in the application for labor certification. The director also determined that the petitioner had not submitted a copy of the beneficiary's birth certificate.

On appeal, the petitioner submitted a copy of the beneficiary's birth certificate, an English translation of the beneficiary's birth certificate, and a letter from the beneficiary's former employer verifying the beneficiary's experience and his ability to use the specific type of machinery listed on the certification under other special requirements. The petitioner has now established that the beneficiary possesses the requisite experience specified on the temporary labor certification. The petitioner also submitted the beneficiary's birth documentation and English translation. The remaining issue is whether the beneficiary possesses the requisite education specified on the labor certification.

The regulation at 8 C.F.R. 214.2(h) (5) states in pertinent part:

(v) *The beneficiary's qualifications - (A) Eligibility requirements.* An H-2A petitioner must establish that any named beneficiary met the stated minimum requirements and was fully able to perform the stated duties when the application for certification was filed.

(C) *Initial evidence of education and other training.* A petition must be filed with evidence that at the required time each beneficiary met the certification's minimum post-secondary education and other formal training requirements. Initial evidence must be in the form of documents, issued by the relevant institution or organization, that show periods of attendance, majors and degrees or certificates accorded.

The Application for Alien Employment Certification (Form ETA 750) at Part A indicates that the minimum amount of education required to perform satisfactorily the job duties is a high school education. The record of proceeding, as it is presently constituted, contains the beneficiary's evaluation card or report card when he was eleven years old. The record does not contain evidence of the beneficiary's completion of high school. Absent

documentation to establish that the beneficiary has completed his high school education, as specified on the labor certification, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.